

MSDA

Michigan Soft Drink Association

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December 11, 2007

William E. Lobenherz, President
and Chief Executive Officer

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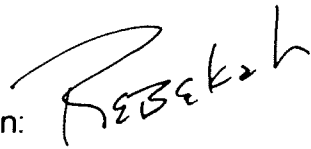
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The Honorable Rebekah Warren
Michigan House
PO Box 30014
Lansing MI 48909



Dear Representative Warren:

Michigan's soft drink bottlers and distributors have continued to take aggressive action to stop the fraudulent redemption of non-Michigan empty beverage containers.

Several years ago we developed "redemption best practices" which are used by our bottlers and distributors to audit for foreign containers (see attached). More recently, we worked closely for months with the State Police and the Department of Treasury to identify and apprehend organized redemption fraud schemes (see attached). Currently, we are engaged in a joint effort with the brewers, the retailers, and reverse vending machine (RVM) technology interests to develop a technological solution to the one remaining fraudulent redemption problem – dishonest people committing fraudulent redemption through RVM's.

In recent years, the fraudulent redemption situation in Michigan has increased. Unclaimed deposits paid to the state declined from the peak of \$23.5 million in 2000, to \$16.3 million in 2006 – a drop of \$7.3 million, which we believe is principally attributable to fraudulent redemption. Prior to reverse vending machines, our beverage distributors used the redemption best practices system that relied on the individual delivery driver's ability to examine the clear bags of empty containers for nonconforming product, or to reject bags only partially full. The more recent widespread use of RVM's, with the way they crush and then comingle empty containers, is not as conducive to our own individual inspection efforts, and we therefore are now looking at new technological approaches to ferret out foreign containers.

Soft drink bottlers and distributors, Anheuser Busch, Miller Brewing, Coors, the RVM sector, retailers, and related technology companies have all joined together to develop this voluntary industry approach which can identify deposit containers within the reverse vending environment, and thereby reject foreign containers (see attached). We have made good progress, and we have a scheduled February 4, 2008, meeting date set to report our progress and review a prototype.

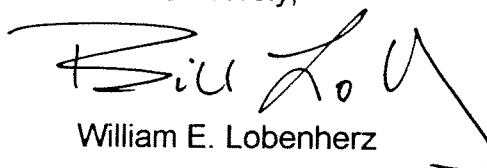
It should be noted that these voluntary efforts do not come without a new and increased cost to our industry. These costs will translate into increased product prices and lost jobs for Michigan workers. The deposit law already costs our industry tens of millions of dollars annually to implement a statewide recycling program for Michigan citizens. These new efforts we are taking will not benefit our industry – the only entity that will benefit is the State Treasury.

The Universal Product Code has significant value and productivity attributes for industry in the identification, tracking, inventory, financial accounting, and transportation of products on a nationwide (indeed, worldwide) basis. Multi-state and worldwide producers, manufacturers, and retailers rely on the universal nature of the UPC codes for multiple facets of their business. These giant productivity and information gains for industry would be significantly diminished, and become much more expensive, if an individual state were to come along and mandate that the Universal Product Code for all of our products could no longer be universal.

It is for these reasons that we oppose suggestions to mandate a new industry UPC standard and practice that would be unique to Michigan. While our development and implementation of the alternative voluntary solution will, in and of itself, also result in annual increased costs to our industries, and the loss of some Michigan jobs in our industry, it will not be nearly as costly, or result in as many lost jobs, as a single state mandated UPC change.

Thank you in advance for your careful consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Lobenherz", with a stylized flourish at the end.

William E. Lobenherz

Enclosures

Cc: Committee Members

Representative Steve Bieda

Michigan Legislative Consultants

MICHIGAN SOFT DRINK ASSOCIATION

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Telephone: 517-371-4499 Fax: 517-371-1113

March, 2005

William E. Lobenherz, President

REDEMPTION BEST PRACTICES

Aluminum, Glass, and PET Plastic Deposit Containers

Stores Without Reverse Vending Machines(RVMs)

1. A beverage distributor is obligated to accept from a dealer empty deposit containers which are of the same kind, size, and brand sold by the distributor – and pay to the dealer the 10 cent refund value for the container.
 - If the container contains something other than the residue of its original contents, the distributor may refuse to accept it, and is not required to pay the 10 cent refund value to the dealer.
 - If the container is not of the kind, size and brand sold by the distributor, then the distributor is not required to accept the container or pay the 10 cent refund value.
 - If the 10 cent refund value and the name of this state is not visible on the container, then the distributor is not required to accept the container or pay the refund value, even if the container is of the same kind, size, and brand sold by that distributor.
2. In order to determine if the empty container is of the same kind, size and brand sold by that distributor, and bears the MI 10 cent refund, the distributor must be able to visually identify the container. Thus, containers must be tendered in clear plastic bags.
 - If the containers are presented to the distributor in an opaque bag or other opaque receptacle, the distributor is not required to accept the bag or receptacle, or open it to identify the contents.
 - Similarly, with glass containers, if the containers are presented to the distributor in an opaque receptacle which does not lend itself to easy identification by the distributor that the containers are of like kind, size, and brand sold by the distributor, and bear the MI 10 cent refund value, the distributor is not required to accept those containers.
3. Unless the dealer wants to individually count the containers when presenting them to the distributor, the dealer must have the containers separated by material and size, and placed in uniform sized bags, or in the case of glass, placed in boxes or shells. The bags shall be filled with the following counts of redeemable aluminum or plastic containers, as indicated by a tie-off mark on the bag. Glass containers shall be in a full box /shell with a count identical to the number of containers contained in the box/shell when full product was delivered.
 - 240 aluminum cans (bags)
 - 120 PET plastic containers, 1 liter or smaller (bags)
 - 40 PET plastic containers, 2 liter size (bags)
 - 24 glass containers (or the number of containers in the box/shell generally sold by the industry when full, based on container size).
4. If a bag or box/shell is obviously not filled to the prescribed level, the distributor shall not take the bag or box/shell, or give redemption credit. In those instances where a distributor has reason to believe there has been a pattern of bags not filled to the proper count, or containing foreign, non - deposit, or other containers for which the distributor is not required to accept or pay a 10 cent refund value, the distributor should put an identifying sticker or tag on the bags from that dealer, and then audit the bags.

If the number of appropriately refundable containers in the bags is consistently short over a period of audits (two is recommended), the distributor should inform the dealer of the average shortfall, and provide notice that if the shortfall continues, the distributor will begin to reduce the 10 cent refunds to the dealer by an equivalent percentage. If a subsequent audit of the dealer's bags shows that the shortfall is continuing, the distributor should reduce refund values paid the dealer according to the dealer's average shortage, and continue the practice for two months, at which time the distributor shall reaudit and reevaluate the store accordingly.
5. A distributor should always credit a dealer for the number and kind of full bags or boxes/shells

properly attributable to that distributor, and which the distributor accepts and removes from the store.

6. A distributor should not give credit to a dealer for more than the number of full bags or boxes/shells properly attributable to that distributor, and which are accepted by the distributor and actually removed from the store.

7. A distributor should not remove from a store more bags or boxes/shells containing empty redeemable containers than are properly attributable to that distributor.

8. A distributor should not leave the dealer without a receipt in writing identifying the number of bags and boxes/shells taken, credits given, and the date.

9. A distributor should make available to the dealer a source from which it may acquire the appropriately sized clear plastic bags with a tie-off mark, and appropriate boxes/shells to hold empty glass containers.

Stores with Reverse Vending Machines (RVMs) that are Not on Third Party Pick-Up

10. Numbers 4 through 9, above, apply to dealers with RVMs.

11. RVMs shall not commingle glass containers attributable to different distributors, and they shall be redeemed as outlined for stores without reverse vending machines (numbers 1 through 9, above).

12. RVMs commingle pet or aluminum containers from the various distributors into the same bag. While a distributor is not required to accept bags with containers that are not the same kind,

size, and brand sold by the distributor to the dealer, as a matter of practice, distributors have been accepting such bags as an accommodation to the dealer (so the dealer can take advantage of the labor cost savings resulting from use of the RVMs). The containers in these bags must be flattened and must be able to be confirmed as Michigan 10 cent deposit containers.

The distributor should not accept and remove any bags of the commingled containers until a receipt is prepared by the dealer and given to the distributor. The receipt in writing given to the distributor by the dealer should be a printout from the RVM computer which shows the number of containers (translated into bags) attributable to that distributor since the distributor's last pick-up. Care should be taken to be certain the printout is an original (not a copy) with the correct date. If the printout is a reprint, it shall be clearly identified as a reprint, with the correct date, and shall be a separate original document.

13. Similar to 2, above, the bags must be clear so the distributor can visually ascertain that the containers are crushed deposit containers, separated by material.

14. Similar to 3 above, the bags should contain uniform counts of containers separated by material using one of the six RVM change bag settings, as follows:

- 720, 600, or 480 aluminum cans
- 160, 120, or 80 PET plastic containers, any size

DEALER RIGHTS AND RESPONSIBILITIES UNDER THE MICHIGAN BEVERAGE CONTAINER LAW

1. A dealer need not accept from a person, nor pay the refund value to a person, of a container which fits any one of the following descriptions:
 - The container is not of the same kind, size, and brand sold by that dealer.
 - The contents of the container were consumed in the dealer's sale or consumption area and the dealer did not charge a deposit when the container was purchased from the dealer.
 - The container contains a substance which is something other than the residue of its original contents.
 - A deposit was not paid when the container was purchased at retail.
 - The container does not indicate, by embossing or other secure method, the refund value and the name of this state (MI).
 - A deposit refund has already been paid on that container (unless it is a container sanitized and refilled by the manufacturer).
2. A dealer is not required to accept from a person more than \$25 worth of refundable containers in any one day.
3. A dealer shall post in the redemption area a notice that says substantially the following: "A person who returns for refund an out-of-state non returnable container is subject to penalties of up to 93 days in jail and a fine of \$500 and restitution."



MICHIGAN BOTTLE DEPOSIT LAW FREQUENTLY ASKED QUESTIONS

Where can I view a copy of the Michigan Bottle Deposit Law?

The Michigan Beverage Containers Initiated Law of 1976, commonly known as the Bottle Bill or Bottle Deposit Law, Michigan Compiled Laws (MCL) Sections 445.571 through 445.576 (Michigan Bottle Deposit Law), can be found at: <http://www.michiganlegislature.org/mileg.asp?page=getObject&objName=mcl-Initiated-Law-of-1976>. At this Internet site, you will find the most up-to-date requirements for bottlers, retailers, and consumers.

What are the bottle return rates of beverage containers in Michigan?

Michigan does not collect statistics regarding beverage container return rates. Information is collected by the Michigan Department of Treasury (Treasury) regarding the amount of deposits collected and returned (see below). These numbers would not account for beverage containers purchased in another state or country and returned illegally for a deposit here in Michigan.

Bottle Deposit Information (in millions)			
Year	Total Deposits Collected	Total Refunds	Percent Redeemed
1990	\$294.4	\$289.0	98.17%
1991	364.1	354.6	97.39%
1992	361.7	363.2	100.41%
1993	369.2	362.1	98.08%
1994	383.0	380.0	99.22%
1995	391.9	387.1	98.78%
1996	403.6	394.2	97.67%
1997	412.9	401.5	97.24%
1998	457.8	443.2	96.81%
1999	429.0	407.0	94.87%
2000	418.9	395.4	94.39%
2001	441.9	424.4	96.04%
2002	443.9	425.8	95.92%
2003	434.3	422.7	97.33%
2004	428.4	417.8	97.53%
2005	427.6	415.4	97.15%
2006	415.8	399.5	96.08%
Total:	\$6,878.40	\$6,682.7	—
Average:	—	—	97.2%

Handwritten notes on the left margin:

- 54M — points to 1990
- 9.5M — points to 1991
- 22.0M — points to 1999
- 23.5M — points to 2000
- 12.2M — points to 2005
- 16.3M — points to 2006

How is the Michigan Bottle Deposit Law escheat used?

Jennifer M. Granholm, Governor
Steven E. Chester, Director



Waste and Hazardous Materials Division
Michigan Department of Environmental Quality
525 West Allegan Street
Lansing, Michigan 48933
<http://www.michigan.gov/deq>

Updated September 18, 2007

13 Arrested In Connection With Can Scam

Authorities: Smuggling Rings Defrauded Mich. Bottle Deposit Fund

POSTED: 10:31 pm EDT September 26, 2007

UPDATED: 9:36 am EDT September 27, 2007

DETROIT -- Authorities said they arrested 13 people and seized more than \$500,000 in cash after breaking up a smuggling ring that collected millions of beverage containers in other states and cashed them in for 10 cents apiece in Michigan.

A total of 15 people were named in a 67-count warrant issued as part of Operation Can Scam, Attorney General Mike Cox said Wednesday. Some suspects were members of two smuggling rings based in Ohio and others were Michigan merchants who took part in the scheme, he said.

Investigators alleged that millions of non-redeemable out-of-state cans were collected, crushed, packaged in plastic bags and sold at a discount to merchants who then redeemed them. Bulk redemption payments from the state are based on weight.

The scheme defrauded the Michigan Bottle Deposit Fund, whose proceeds are used to pay for environmental cleanup efforts, Cox said in a statement.

The charges include maintaining a continuing criminal enterprise, a 20-year felony, and fraud, a 5-year felony, the statement said.

The probe recalled a 1996 episode of "Seinfeld" in which two characters learn about Michigan's 10-cent deposit law and head there with a truckload of 5-cent New York cans, hoping to cash in on the difference, before getting sidetracked.

9/28/2007

FRAUDULENT CONTAINER REDEMPTION IN MICHIGAN

A Proposed Voluntary Industry Solution

The beverage industry in Michigan, from brewers, to bottlers, to distributors, retailers, and reverse vending machine companies, is committed to finding and implementing a voluntary industry solution that will significantly reduce the incidence of fraudulent redemption of empty beverage containers in Michigan.

To that end we have engaged our research, technical and operations personnel to look for and at various possible solutions, and we have searched out and engaged machine vision and ink jet illumination technology experts from across the nation.

We are satisfied that vision and/or ink jet illumination sensor technologies currently exist that can distinguish deposit containers with a comfortably high accuracy rate to curb the fraudulent redemption while not disrupting customer satisfaction at store level. But, our intense inquiry over the last two months has also made it clear to us that the satisfactory application of such technology inside the reverse vending machine environment at our busy stores has not been tested or confirmed.

We recognize that any technology initiative to reduce fraudulent redemption of beverage containers in Michigan, in addition to significant development and start-up costs, will have significant new and ongoing costs to each of the industries associated with it. Whether it be from additional supply chain costs, or additional technology and maintenance costs, virtually every sector of our industry will experience new costs.

The industry is seeking to develop the most cost effective solution to addressing the fraudulent redemption issue. We are seeking to develop a solution that minimizes job losses or price increases in Michigan, while also significantly reducing the incidence of fraudulent redemption.

In developing a technological solution, we recognize that the further down the supply chain that operational and product changes occur, as a rule of thumb the incremental costs to our industry will be multiplied. It is for this reason that lid recognition and/or an ink jet illumination sensor technologies are being viewed as the most promising of the voluntary industry solutions.

A comprehensive, cost effective solution not only requires the effort and involvement of the industry, but it also needs the participation of the state and the law enforcement community to be effective. Additionally, because of the diversity

of our business models and organizations, the most cost effective solution might differ among the companies.

We feel very comfortable that the technology solutions we are looking to implement will address the vast majority of the fraudulent redemption occurring from foreign containers being brought into Michigan that are redeemed through our existing reverse vending machines.

The fraudulent redemption occurring from organized truckloads of foreign containers (both full and empty), which the nonalcoholic beverage sector feels is the larger of the fraud in its sector, would not be solved by this technology approach. It will take a coordinated law enforcement approach to address those types of fraudulent schemes, and our nonalcoholic beverage producers and distributors pledge to continue to work in cooperation with the State Police, the Department of Attorney General, the Department of Treasury, and local law enforcement agencies to abate those practices.

We also know that in order to be successful in thwarting the overwhelming majority of machine based fraudulent redemption, every single one of our packages does not necessarily have to be covered or converted in the process. Our smaller volume packages are not conducive to mass fraud, as the out-of-state consumer (thief) would not find it financially worthwhile to sort through a bunch of nonredeemable containers, just to find a few redeemable ones to bring over the border. The extent of this kind of fraudulent activity on low volume packaging would be insignificant, but the incremental added cost to implement these package conversions and separations would be extraordinarily (and in some cases, prohibitively) expensive.

We ask that the State of Michigan join with us in the development and roll out of this industry solution. Of all the stakeholders in the process, the State is the only entity that would realize any financial gain. For all others, there would be incremental, ongoing new costs, which for some would be in the millions of dollars annually. We feel that if the State were to engage in the one time cost of getting this started, that there would be immediate monetary returns to them of at least double their investment, which they would receive every year – and this for only a one time investment, unlike the incremental new costs that each in our industry will have to endure every year.

We invite a process whereby the state, as a partner, can be kept continually abreast of our progress. We also know that if our progress is unsatisfactory, that the state should have every opportunity and right to pull the plug on its participation. We would like to immediately begin in the development of bench prototypes of his solution, while we develop a plan with the state for its participation and oversight.